



**Request for City Council Committee Action
From the Department of Human Resources**

Date: June 9, 2003

To: Ways and Means Committee

Subject: Respect In The Workplace Policy

Recommendation:

To replace the current Sexual Harassment Policy with the Respect in the Workplace Policy so that the City's policy is more closely aligned with US Supreme Court decisions and Equal Employment Opportunities Commission guidelines on harassment in the workplace.

Prepared or Submitted by: George Caldwell, Director of Employment Services, 673.2459
Caroline Bachun, Assistant City Attorney, 673.2754

Approved by:

Pamela French

Pamela French, Interim HR Director 673.2139

John Moir

John Moir, City Coordinator 673.3992

Presenters in Committee: George Caldwell, Director of Employment Services
Caroline Bachun, Assistant City Attorney

- ☒ No financial impact – or – Action is within current department budget
(if checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☐ Other financial impact (explain)
- ☐ Request provided to the budget Office when provided to the Committee Coordinator

Community Impact:

Other: Administer programs in order to ensure fair and equitable treatment for all employees.

Background/Supporting Information Attached:

1. Cover Letter to the Chair of Ways and Means Committee
2. Respect in the Workplace Policy

**Human Resources Department
Employment Services Division**

Memo

To: Barbara Johnson, Chair Ways and Means Committee

From: George Caldwell, Director of Employment Services 

CC: Pamela French, Interim Director of Human Resources

Date: 06/09/03

Re: Respect In The Workplace Policy

According to the Equal Employment Opportunities Commission (EEOC) harassment remains a pervasive problem in American workplaces. The number of harassment charges filed with the EEOC and state fair employment practices agencies has risen significantly in recent years. For example, the number of sexual harassment charges increased from 6,883 in fiscal year 1991 to 15,618 in fiscal year 1998. The number of racial harassment charges rose from 2,849 to 6,129 in the same time period. These represent increases of 126% and 115% respectively. The trend indicates that harassment in its various forms is increasing. The trend in the city, while not as drastic, did register an increase in sexual harassment complaints.

In 1998, the U.S. Supreme Court decided two cases (Ellerth and Faragher) on harassment. While the Court addressed sexual harassment, the Court's analysis drew upon standards in cases involving harassment on other protected bases. The Supreme Court also relied on Commission (EEOC) guidance, which has long advised employers to take all necessary steps to prevent all forms of harassment.

The ruling in Ellerth and Faragher applies to harassment by supervisors based on race, color, sex (whether or not of a sexual nature), religion, national origin, protected activity, age, or disability. Thus, according to the EEOC and by extension, the Court, employers should establish anti-harassment policies and complaint procedures covering all forms of unlawful harassment. Since the City's policy included, but did not elaborate on what constituted other forms of harassment, potential victims may not have known that they had a right to file charges based on other forms of harassment.

In difficult economic times, such as that facing the City today, the uncertainties faced by more layoffs and war put greater strain on many of the City's employees. Often times these additional strains result in increases in impermissible harassing behaviors such as those across the nation that were directed at Middle Easterners after September

Eleventh.

It should be noted that the anti-discrimination laws are not a "general civility code." Neither the federal laws nor the attached Respect In The Workplace policy prohibit simple teasing, offhand comments, or isolated incidents that are mildly unkind. However, the City's policy does provide a remedy when the behavior crosses the line into unlawful discrimination. The Respect In The Workplace Policy brings the City's policy in line with the EEOC Guidelines on all forms of harassment and with the U.S. Supreme Court's more recent interpretation of those guidelines.

CITY OF MINNEAPOLIS

RESPECT IN THE WORKPLACE POLICY

The goal of the City of Minneapolis in implementing and maintaining this policy is to establish a work environment in which all employees are respected, regardless of their race, color, creed, religion, national origin, sex, affectional preference, marital status, status with regard to public assistance, disability, sexual orientation or age. Employees who do not feel respected in the workplace may choose to resign from employment. It is in the best interests of the City to provide a hospitable and respectful workplace to retain quality employees. The City also desires to create a positive work environment where employees will feel comfortable with their diversity. Having a respectful workplace enriches the City by allowing the City to execute its mission through a diverse workforce that provides valuable and productive services.

Harassment in the workplace based on race, color, creed, religion, national origin, sex, affectional preference, marital status, status with regard to public assistance, disability, sexual orientation or age is unacceptable and will not be condoned or tolerated in day-to-day employment; in employment recruiting, testing, and hiring; in transfers, assignments, promotions, discipline, and termination; or in any other area of employment. Such harassment may be in violation of the Minneapolis Civil Rights Ordinance, the Minnesota Human Rights Act, and the Civil Rights Act of 1964, as amended

I. SEXUAL HARASSMENT.

The City of Minneapolis has adopted the following definition of sexual harassment:

Sexual advances, request for sexual favors, or other verbal or physical acts of a sexual nature constitute sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as basis for employment decisions affecting such individual, or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Courts have recognized acts of harassment directed at a person because of gender to be sexual harassment even though there was no behavior of a sexual nature. The City adopts this interpretation as part of its policy. Sexual harassment is a violation of federal and state laws and the Minneapolis Civil Rights Ordinance, and may expose not only the City, but also individuals to significant liability under the law.

The following are examples of acts of sexual harassment:

A. Physical assault of a sexual nature, such as:

- (1) rape, sexual battery, molestation or attempts to commit those offenses, or committing an act with intent to cause fear in another of immediate bodily harm or death; and
- (2) intentional physical conduct which is sexual in nature, such a touching, pinching, patting, grabbing, brushing against another employee's body, or touching the clothing covering the immediate area of the complainant's intimate parts.

B. Sexual advances, propositions or other sexual comments, such as:

- (1) sexual-oriented gestures, sounds, remarks, jokes, or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee;
- (2) preferential treatment or promise of preferential treatment for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
- (3) subjecting, or threatening to subject, an employee to sexual attention or conduct or intentionally making job performance more difficult because of the employee's sex.

C. Display of publications anywhere in the City's work place such as:

- (1) displaying or publicizing pictures, posters, cartoons, calendars, graffiti, objects, promotional materials, reading materials, music, or other materials that are sexually revealing, sexually suggestive, sexually demeaning, or pornographic.

Exceptions will be considered in situations where nudity or sexually explicit language is necessary to convey a message important to public health and/or safety.

A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is nude or semi-nude and/or who is posed for the obvious purpose of displaying or drawing attention to private portions of his or her body.

- (2) Displaying signs or other materials purporting to segregate employees by sex in any area of the work place other than rest rooms and similar semi-private lockers/changing rooms.

D. Sexual favoritism. Impact on other employees.

Where employment opportunities and benefits, including but not limited to job assignments or promotions, are granted because of an individual's submission to an employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit. Such actions constitute sexual favoritism, which is a violation of the policy.

II. HARASSMENT BASED ON RACE, COLOR, CREED, RELIGION, NATIONAL ORIGIN, AFFECTIONAL PREFERENCE, MARITAL STATUS, STATUS WITH REGARD TO PUBLIC ASSISTANCE, DISABILITY, AGE, OR SEX (OTHER THAN SEXUAL HARASSMENT).

Physical or verbal conduct that is based on the individual's race, color, creed, religion, national origin, sex (other than sexual harassment), affectional preference, marital status, status with regard to public assistance, disability, sexual orientation, or age constitutes harassment when the conduct:

- A. Has the purpose or effect of creating an intimidating, hostile or offensive working environment.
- B. Has the purpose or effect of substantially or unreasonably interfering with an individual's work; or
- C. Otherwise adversely affects an individual's employment opportunities, such as compensation, terms, conditions, or privileges of employment.

Whether a work environment is intimidating, hostile, or offensive is determined by looking at all the circumstances, which may include the frequency of the conduct, its severity, whether it is physically threatening or humiliating or merely offensive, and whether it unreasonably interferes with the employee's work performance.

An employee has the obligation to notify the City of Minneapolis of any religious requirements that are relevant to the performance of his or her duties. The employee may request specific considerations for religious dress requirements, religious prayer time during the workday, and time off for religious holidays. The City of Minneapolis will consider an employee's religious requests. The City of Minneapolis will not grant a request if it would create an undue hardship because of cost, or health and safety concerns.

The following are examples of acts of harassment in the workplace:

Based on race, color, creed, religion, national origin, sex, affectional preference, marital status, status with regard to public assistance, disability, sexual orientation, or age:

- A. Making derogatory remarks, gestures, or comments directed at or made in the presence of any employee. Examples include, but are not limited to, telling someone who was born outside of the United States to go back to where they came from; making fun of someone's accent; calling a pregnant woman fat; making negative remarks about an employee's race or culture; teasing someone for wearing religious dress requirements, such as a turban or sari, or for praying during the workday; and vandalizing an employee's property because of the employee's age.
- B. Using derogatory terms directed at or made in the presence of any employee, such as racial epithets. Examples of derogatory terms include, but are not limited to, chink, spic, wetback, polack, smokey, wagon burner, redskin, leprechaun, drunken Irish, towelhead, ayatollah, terrorist, honkey, nigger, gray lady, gook, Jewish American princess or JAP, yid, hebe, kike, homo, fag, faggot, dyke, cripple, gimp, grandpa/grandma, old fart, old man/old lady, and prehistoric relic.
- C. Taking adverse employment action against any employee, such as demoting or terminating an employee.
- D. Intentionally making job performance more difficult for an employee. For example, making an employee the target of practical jokes because he is gay; excluding an employee from a team or duties because of his religion; refusing to supervise or work with an employee because of the employee's national origin; and giving an employee undesirable job duties based on the employee's gender.
- E. Displaying derogatory publications anywhere in the City's workplace, such as posters, cartoons, calendars, graffiti, objects, promotional materials, reading materials, music, e-mails, web sites, or other materials.
- F. Making derogatory jokes. For example, making jokes about an employee's religious beliefs; joking about an employee's accent; and telling homophobic jokes.

III. RETALIATION IS PROHIBITED.

It is a violation of this policy to retaliate or engage in any form of reprisal because a person has raised a concern, filed a complaint of, been a witness to, or otherwise participated in an investigation related to harassment based on race, color, creed, religion, national origin, sex, affectional preference, marital status, status with regard to public assistance, disability, sexual orientation, or age. Examples of retaliation may include:

- (1) arbitrary discipline, unwarranted change of work assignments, providing inaccurate work information, or failing to cooperate or discuss work-related matters with any employee because that employee has complained about, been a witness to or resisted harassment or retaliation; and
- (2) intentionally pressuring, falsely denying, lying about, or covering up or attempting to cover up conduct such as that described above.

IV. PROCEDURES FOR MAKING HARASSMENT COMPLAINTS.

- Where behaviors may be offensive and the offended party has a desire to stop the behaviors without formal procedure, the employee may notify the offending party directly, but is not required to do so.
- The employee may request that a supervisor intervene. A supervisor may intervene by notifying the alleged offender or the entire work unit that the specific offensive behavior(s) will not be tolerated in the workplace. In such cases, the supervisor may discuss the matter with the alleged offender.
- A person who has knowledge or believes harassment has occurred, or is occurring, is encouraged to report that, either verbally or in writing, to one of the following:
 - Supervisor/Manager
 - Department Head
 - Human Resources Generalist
 - Human Resources Director
 - Employment Services Director
- A complaint can be filed by someone who was not the target of harassment or retaliation.
- Complaints of harassment or retaliation will be taken seriously and investigated. The City will begin an inquiry, even if the complainant does not want an investigation conducted, any action taken, or anyone else informed.
- Any supervisor who receives a harassment complaint or who has reason to believe harassment is occurring shall: (1) take prompt action to address the complaint; and (2) report the complaint to the department head or designee. The department head or designee shall report the complaint to the Director of the Human Resources Department.
- The City will immediately begin an inquiry into all allegations of harassment. "Immediate" means within one working day of a complaint being received. The City will begin the inquiry, even if the complainant does not want an investigation conducted, any action taken, or anyone else informed.

- Supervisors shall be held to a higher standard of conduct and shall be subject to a higher level of discipline when engaging in harassment or being aware it is occurring, and failing to take prompt action to end it. A supervisor's failure to enforce this policy or his/her own commission of acts of harassment or retaliation shall result in final warning or dismissal for the first offense, depending upon the nature and severity of the misconduct and the past disciplinary records of the supervisor. Upon a second offense by a supervisor, discharge shall occur.
- Investigations into possible violations of this policy will be conducted by City of Minneapolis Investigative Coordinators or by investigators who are assigned by the Director of Human Resources or designee. All employees are directed to cooperate with City officials (or designees of such) and assigned investigators who are conducting harassment investigations.
- An employee will be allowed a reasonable amount of time away from the job with no decrease in pay to inquire about or file complaints of harassment or retaliation, or to be a witness in a harassment investigation.

DEFINITIONS:

Affectional Preference. "Affectional Preference" means having or manifesting an emotional or physical attachment to another consenting person or persons, or having or manifesting a preference for such attachment, or having or projecting a self-image not associated with one's biological maleness or one's biological femaleness.

Age. For purposes of this policy, "age" means 18 years of age or older.

Creed. "Creed" means religion.

Disability. "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially or substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. "Disability" excludes any condition resulting from alcohol or drug abuse which prevents a person from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others.

Marital status. "Marital status" means whether a person is single, married, remarried, divorced, separated, or a surviving spouse, and includes protection against discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.

National origin. "National origin" means the place of birth of an individual or of any of the individual's lineal ancestors. National origin also means physical, linguistic, or cultural traits associated with a national origin group.

Religion. "Religion" means all aspects of religious observance and practice, as well as belief. Religious beliefs must be sincerely held.

Sex. "Sex" means the character of being male or female and includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

Sexual harassment. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as basis for employment decisions affecting such individual, or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual orientation. "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness.

Status with regard to public assistance. "Status with regard to public assistance" means the condition of being a recipient of federal, state or local assistance, including medical assistance, or of being a tenant receiving federal, state or local subsidies, including rental assistance or rent supplements.